IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. WJC No.205 of 2008
URMILA DEVI
Versus
STATE OF BIHAR & ORS
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4 30.7.2008 In the instant writ petition the petitioner prays for quashing the order dated 20.2.2008 passed by the learned F.T.C.5, Patna in S.T.No.419 of 1995, whereby and where under the learned court below rejected the prayer of the petitioner to recall the order dated 13.4.2007 by which fresh process under sections 82 and 83 Cr.P.C. was directed to be issued. The petitioner assailed the orders on two grounds. The first ground being that property sought to be attached did not belong to accused, rather it belong to the petitioner. Secondly, no attachment order can be issued under section 83 Cr.P.C. only after 30 days of issuance of proclamation under section 82 Cr.P.C.

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One Nandeshwar Singh, the husband of the petitioner is an accused in Digha P.S.Case No.141 of 1994 under section 302 of the Penal Code and section 27 of the Arms Act which is pending for trial. It appears that the husband of the petitioner was granted provisional bail for two weeks by this court by order dated 8.5.1996 passed in Cr.Misc.No. 6525 of 1996 with a direction to surrender on 25.5.1996 but he did not surrender on the aforesaid date. In fact he has not surrendered till today. In the meantime the petitioner lodged a case being Pirbahore P.S.Case No.156 of 1996 stating that her husband was kidnapped by some miscreants. However, in course of investigation the police found the case of kidnapping to be false.

It would be relevant to state here that the process under

sections 82 and 83 Cr.P.C. were issued by the learned Magistrate in the year 1996 and the property of accused was attached, but still the petitioner's husband did not surrender and remained at large. In course of time the case was committed to the court of sessions and the trial court by order dated 8.1.2008 passed a composite order under sections 82 and 83 Cr.P.C.

Learned counsel for the petitioner submits that the process under sections 82 and 83 Cr.P.C. cannot be issued simultaneously. He submits that section 82 Cr.P.C. deals with the proclamation for person absconding evading arrest, despite issuance of warrant. Section 83 Cr.P.C. deals with attachment of property of person absconding. He further submits that the order of attachment of property, moveable or immovable under section 83 Cr.P.C. can only be issued when the proclamation for person absconding under section 82 Cr.P.C.has remained in publication for minimum period of thirty days. In support of his contention, he relied upon a decision of this court in the case of Deo Narayan Singh Vs State of Bihar, 1981 Cr.L.J. 1672.

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The moot question is that once earlier process under sections 82 and 83 Cr.P.C. has been issued in accordance with the provisions under the Act, whether a subsequent order attaching the non-attached properties of the absconder accused under section 83 Cr.P.C. will be issued only after 30 days of issuance of proclamation under section 82 Cr.P.C. In other words, if case lingers for a long time then every time the court passes order under section 83 Cr.P.C. does it necessarily have to pass order under section 82 Cr.P.C.

Learned counsel for the State informs that the process under section 83 Cr.P.C. has already been executed and he rightly submits the relief prayed for by the petitioner on this score has also become infructuous.

As the issue becomes infructuous, this court does not want to go into the merit of submissions raised by learned counsel for the petitioner.

This court observes that if the petitioner believes that she has interest in property attached, she can always make claim and objection under section 84 of the Cr.P.C.

Learned counsel for the petitioner submits that the petitioner is not an accused, rather her husband is an accused in the instant case and therefore she should not be harassed merely because the person alleged to be absconding is her husband.

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It would appear from the materials on record that it is the petitioner's husband who is an accused in the instant case and under the law of land no person who is not an accused, cannot be harassed or tortured in lieu of absconding accused.

In view of discussions made above, I do not find any reason to interfere with the impugned order dated 20.2.2008 passed by the F.T.C. V, Patna.

With the aforesaid observations, this writ petition stands dismissed. (S.P.Singh,J)

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